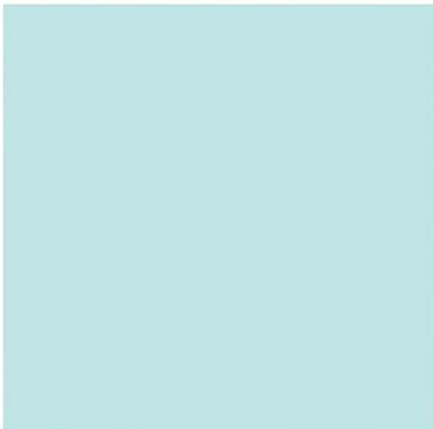
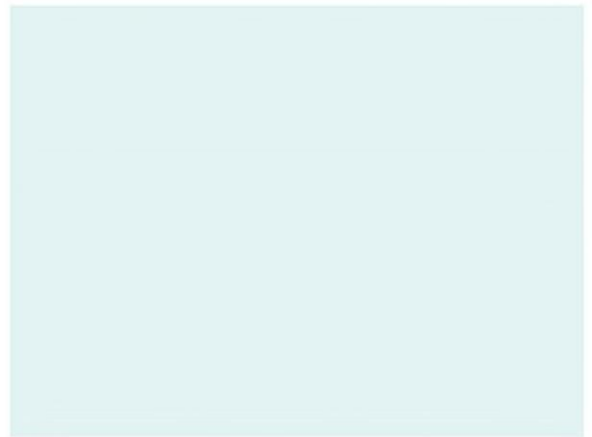




Final Report to the General Assembly

Sales and Use Tax Simplification Task Force

November 2023 | Research Publication 796



Sales and Use Tax Simplification Task Force

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Representative Cathy Kipp, Vice Chair

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November | 2023



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This report is also available online at:

<https://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2023-regular-session>

Committee Charge and Membership

The Sales and Use Tax Simplification Task Force (task force) was originally created in 2017 pursuant to [House Bill 17-1216](#). In its original form, the task force was scheduled to be repealed in 2020; however, [House Bill 20-1022](#) extended the work of the task force for an additional five years through July 1, 2026.

The task force is charged with studying the necessary components of a simplified sales and use tax system for both the state and local governments, including whether there are feasible solutions for:

- making audits of retailers more uniform for all state and local taxing jurisdictions in the state;
- the utilization of a single sales and use tax return for state and local taxing jurisdictions as a part of the Sales and Use Tax Simplification (SUTS) system, created pursuant to [Senate Bill 19-006](#);
- streamlining the requirements for state and local sales tax licenses, use tax licenses, and business licenses used for purposes of collecting sales and use taxes;
- making uniform, and possibly increasing, the filing threshold amount for monthly sales tax filings between the state and local governments, including home rule municipalities;
- simplifying use taxes levied by the state and local governments, including home rule municipalities;
- streamlining, and possibly making uniform, the state and local sales tax exemptions for medical devices, including reviewing best practices among states in this area;
- simplifying the process by which state and local sales and use taxes are collected for the purchase of a motor vehicle;
- simplifying the issuance of local building permits and the levying of use tax on building materials and on mobile and small mobile construction equipment;
- simplifying the process to claim and administer the various state sales and use tax exemptions; and
- simplifying the sales tax collection and remittance requirements for nonprofit organizations.

The task force is also required to:

- seek regular updates from the Governor's Office of Information Technology and the Colorado Department of Revenue (DOR) regarding the SUTS system, including the geographic information system (GIS) database;
- monitor and encourage participation by businesses and home rule municipalities in the SUTS system;

- review the way in which special districts and specially assessed sales taxes add to the complexity of the state’s sales and use tax structure, including, at minimum, the Regional Transportation District, the Scientific and Cultural Facilities District, any local improvement districts, any regional transportation authority, any multi-jurisdictional housing authority, and any health services district, and any mass transportation system tax, public safety improvement tax, metropolitan district tax, local marketing district tax, and county lodging district tax;
- review and compare the state’s sales and use tax definitions with the standard sales tax definitions developed and adopted by local taxing jurisdictions pursuant to [Senate Joint Resolution 14-038](#), to determine if any simplification might be achieved between the two sets of definitions;
- examine the effects of the changes to the vendor fee implemented pursuant to [House Bill 19-1245](#);
- seek regular updates from the Legislative Oversight Committee Concerning Tax Policy created pursuant to [House Bill 21-1077](#) regarding any decisions that the committee may make related to any sales or use tax expenditures evaluated by the Office of the State Auditor pursuant to Section 39-21-305, C.R.S.;
- explore options for eliminating a DOR requirement for taxpayers to use branch ID reporting;
- determine whether the state should adopt a sales tax exemption for an isolated or occasional sale of a business in an asset sale;
- regularly review the business impact of the destination sourcing rules set forth in Section 39-26-104 (3), C.R.S., including the thresholds that trigger the requirement for destination sourcing; and
- analyze or review any other relevant topic related to the simplification of sales and use tax administration in the state.

The enacting legislation also requires the task force to submit a report to Legislative Council by November 1 of each year, which may or may not include recommendations for legislation.

There are 15 members on the task force:

- Senator Kevin Van Winkle, appointed by the Minority Leader of the Senate;
- Representative Cathy Kipp, appointed by the Speaker of the House of Representatives;
- Senator Jeff Bridges, appointed by the President of the Senate;
- Representative Rick Taggart, appointed by the Minority Leader of the House of Representatives;
- Josh Pens, Director of Tax Policy Analysis, representing the Colorado Department of Revenue;
- Kevin Bommer, Executive Director, representing Colorado Municipal League;

- Tracy Kraft-Tharp, Jefferson County Commissioner, representing Colorado Counties, Inc.;
- Jim Welte, Operations Manager, Summit Brick Company, appointed by the Governor as a member of a statewide association of small businesses that is addressing the simplification of sales and use tax collection;
- Rachel Quintana, Partner, Ernest & Young, LLP, appointed by the Governor as a member of the statewide chamber of commerce;
- Michelle Bush, Partner, Silverstein & Pomerantz LLP, appointed by the Governor as a state and local sales tax law practitioner;
- Judith Vorndran, Partner – State and Local Tax, TaxOps, appointed by the Governor as someone with state and local sales and use tax accounting experience;
- Leslie Edwards, Finance Director, Town of Frisco, appointed by the Colorado Municipal League, representing the small population category;
- Kenneth Keeley, Tax Manager, Commerce City, appointed by the Colorado Municipal League, representing the medium population category;
- Bryan Archer, Director of Finance, City of Arvada, appointed by the Colorado Municipal League, representing the large population category; and
- Don Korte, Director of Tax Compliance, City and County of Denver, appointed by the Colorado Municipal League, representing the largest population category.

Background

The task force is charged with studying sales and use tax simplification between the state and local governments, including home rule municipalities, given that Colorado's system of state and local sales and use taxes is one of the most complicated in the country.

State tax. Colorado is one of 45 states to assess a state sales tax.¹ Among states with a sales tax, Colorado's state sales tax is assessed at the lowest rate, 2.9 percent. The tax base includes all sales of tangible personal property except those that are specifically exempted, and exempts all sales of services except those that are specifically subject to the tax.² The state use tax is assessed when sales tax is due but was not collected. In these cases, the purchaser is required to remit use tax directly to the state. The state sales and use tax is administered by DOR.

County taxes. With voter approval, counties are authorized to assess a sales tax, use tax, or both.³ County sales taxes are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to counties.⁴

¹Alaska, Delaware, Montana, New Hampshire, and Oregon do not assess statewide sales taxes.

²Section 39-26-104, C.R.S.

³Section 29-2-103, C.R.S.

⁴Section 29-2-105 (1)(d), C.R.S.

In these cases, boards of county commissioners may adopt an ordinance or resolution to extend the exemption(s). Notable state sales tax exemptions that are not necessarily available at the county level include the exemptions for: machinery; electricity, gas, and heating oil; food for home consumption; sales by charities; and retail marijuana. Sales taxes assessed by 51 counties are administered by DOR, which collects tax revenue and remits the tax to the appropriate county. The provisions governing county taxes do not apply to the consolidated city-county governments of Denver and Broomfield, each of which has a home rule charter. Ten counties do not assess a sales tax.

Municipal taxes. Provisions for municipal taxes vary greatly according to whether the municipality has adopted a home rule charter pursuant to Article XX of the Colorado Constitution. Municipalities that have not adopted a home rule charter are authorized in statute to assess sales or use taxes in a manner similar to the county taxes described above. Municipalities that have adopted a home rule charter have broad jurisdiction over their own sales taxes and generally are not bound by statutory sales tax requirements.

Statutory municipalities. With voter approval, municipalities that have not adopted a home rule charter (statutory municipalities) are authorized to assess a sales tax, use tax, or both.⁵ Sales taxes assessed by these municipalities are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to municipalities.⁶ In these cases, the city or town council may adopt an ordinance or resolution to extend the exemption(s). Municipal sales taxes are administered by DOR, which collects tax revenue and remits the tax to the appropriate municipality.

Home rule municipalities. Article XX, Section 6, of the Colorado Constitution empowers any municipality with a population of 2,000 people or more to adopt a home rule charter with voter approval. Home rule municipalities have broad latitude to govern themselves in matters of local concern.⁷ With voter approval, home rule municipalities may assess sales or use taxes on a locally determined collection of goods and services. Because municipal taxes need not be assessed on the same tax base as the state, home rule municipalities may variously tax transactions that are exempted at the state level or exempt transactions that are taxed at the state level. Additionally, home rule municipalities may tax specific goods or services at a different rate from others.

⁵Section 29-2-102, C.R.S.

⁶Section 29-2-105 (1)(d), C.R.S.

⁷*City and County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

Home rule municipalities may choose whether to collect and administer their sales taxes locally. Municipalities that choose to collect their own sales taxes may develop their own systems for licensure, remittance, and auditing. Ninety-nine home rule municipalities assess a sales tax. Sixty-eight home rule municipalities collect and administer their own sales taxes, sixty of which currently participate in SUTS, with two more currently in onboarding and expected to begin accepting returns soon, according to DOR. DOR collects and administers sales taxes for home rule municipalities that choose not to administer their own sales taxes.

Special districts. With voter approval, certain special districts and other limited purpose governmental entities are permitted to assess sales taxes up to certain tax rate limits. Special districts authorized to assess sales taxes include:

- the Regional Transportation District in the Denver metropolitan area;
- the Scientific and Cultural Facilities District in the Denver metropolitan area;
- local improvement districts in Boulder, Douglas, Jefferson, and Mesa Counties;
- mass transportation systems in Eagle, Pitkin, and Summit Counties;
- regional transportation authorities in Eagle, El Paso, Garfield, Gunnison, Logan, Pitkin, and San Miguel Counties;
- a multi-jurisdictional housing authority in Summit County;
- a public safety improvement district in Delta, Montrose, and Mesa Counties;
- metropolitan districts throughout the state;
- a health services district in parts of Delta, Douglas, Montezuma, Park, Otero, and Teller Counties; and
- local marketing districts in Alamosa, Eagle, Gunnison, Larimer, Moffat, and Routt Counties.

Statutory requirements for each special district sales tax are included in the portion of state law that authorizes creation of the particular type of special district. In general, all special district sales taxes are collected and administered at the state level. The tax base for special districts is generally consistent with the state tax base, and changes to the state base (e.g., via the creation or repeal of a sales tax exemption) are extended by default to special districts.

TABOR. Article X, Section 20, of the Colorado Constitution was added via ballot initiative in 1992. This section, known as the Taxpayer's Bill of Rights or TABOR, prohibits the state government and all local governments from enacting or increasing taxes without voter approval. TABOR complicates simplification efforts because proposals to narrow the tax base, e.g., in local jurisdictions that have not enacted sales tax exemptions found at the state level, require voter approval to enact corresponding tax rate increases in order to offset revenue loss. Thus, jurisdictions that currently assess sales taxes on a broader collection of goods and services than those taxed by the state must either maintain their dissimilar tax base, narrow the base while

increasing tax rates with voter approval, or narrow the base without voter approval and experience a decrease in revenue.

Out-of-state sales tax. The June 2018 U.S. Supreme Court decision in *South Dakota v. Wayfair* held that a state may require an out-of-state retailer to collect sales tax on purchases made by an in-state consumer, even if the out-of-state retailer does not maintain a physical presence in the taxing state. Until the *Wayfair* decision, taxpayers in Colorado were required to voluntarily pay taxes to the DOR on purchases from online, out-of-state retailers, rather than the tax being collected by the retailer and remitted to DOR.

Following the *Wayfair* decision, DOR moved toward requiring retailers without physical presence (out-of-state retailers) to collect state sales tax and the sales taxes levied by statutory municipalities. In addition, the department adopted emergency rules to assist in administering sales tax collections and, among other things, to specify that the state's collection requirement would not be retroactive and would apply to retailers with sales exceeding \$100,000. These rules were codified into law with the adoption of [House Bill 19-1240](#) and went into effect on June 1, 2019.

History of the SUTS system. In 2017, the task force recommended, and the General Assembly later passed, [House Bill 18-1022](#). The bill required DOR to issue a request for information (RFI) to contract for an electronic SUTS system. The bill outlined that the system should provide:

- accurate address location information;
- a single application process for sales tax licenses;
- a uniform sales tax remittance form;
- a single point of remittance for sales and use tax; and
- a taxability or exemption matrix.

DOR issued the RFI on March 16, 2018, and received responses from four vendors. In June 2018, DOR established a 14-member team, which included four members of the task force, to review RFI responses.

SUTS solicitation - Senate Bill 19-006. In 2018, following the review of RFI responses, the task force recommended, and the General Assembly later passed, [Senate Bill 19-006](#), which:

- required the Governor's Office of Information Technology (OIT) to solicit an electronic SUTS system through the state's procurement process;
- specified that OIT and DOR must work with stakeholders to determine the scope of work for the SUTS system before soliciting bids for its creation; and
- required the creation of an electronic SUTS system and a GIS database.

Senate Bill 19-006 also outlined that, on and after the date the electronic SUTS system is online, DOR is required to accept returns and payments processed through the SUTS system for state sales and use tax. In addition, SB 19-006 specified that it is the General Assembly's intent that at least three home rule municipalities voluntarily use the SUTS system for accepting returns and processing payments of any local sales and use tax once the electronic SUTS system is online. The voluntary use of the SUTS system by home rule municipalities should increase every year so that no later than three years after the effective date of the bill, all home rule municipalities are voluntarily using the SUTS system.

SUTS appropriation history and ongoing operational funding. Senate Bill 19-006 included an appropriation for FY 2019-20 of:

- \$9,183,000 General Fund to OIT for the initial funding of the electronic SUTS system; and
- \$817,000 General Fund to OIT for the GIS database to maintain jurisdictional boundaries of sales tax districts and to calculate appropriate sales and use tax rates for individual addresses.

The General Assembly appropriated an additional \$8.75 million to OIT for FY 2020-21, for the electronic SUTS system and GIS database. According to the DOR's update to the Joint Technology Committee on September 14, 2020, the SUTS system and GIS database were completed at almost \$10.6 million under budget, with funding reverting back to the General Fund.

As part of the 2021 Long Bill, the General Assembly appropriated \$2.2 million General Fund and 4.6 FTE to DOR for FY 2021-22 and ongoing for the support and maintenance of the SUTS system.

System post-implementation requirements. In 2019, the General Assembly passed [House Bill 19-1240](#), which made several changes to the state's sales and use tax laws. Among those changes, the bill codified and expanded upon DOR emergency rules, promulgated following the U.S. Supreme Court's decision in the *South Dakota v. Wayfair* case.

Among other changes, the bill adopted the destination-based sales tax sourcing rules used in the multistate Streamlined Sales and Use Tax Agreement. Under the bill, small businesses with less than \$100,000 in annual sales were exempt from destination-based sales tax sourcing. The bill repealed this small business exception until 90 days after the DOR notified the Revisor of Statutes that the GIS database was online and available for a retailer to use to determine the taxing jurisdiction(s) in which an address resides. DOR was directed to notify the Revisor of Statutes no later than 15 days after the GIS database was online. On April 1, 2021, DOR sent a notice to retailers that the system was online and that all retailers would need to comply with destination-based sourcing rules starting July 1, 2021. However, [Senate Bill 21-282](#) removed this contingency and extended the exemption for small retailers until February 1, 2022. [House Bill 22-1027](#), which was recommended by the task force and passed by the General Assembly, extended this exemption until October 1, 2022.

[House Bill 20-1023](#), which was also recommended by the task force and passed by the General Assembly, repealed the hold harmless provisions for vendors using the state's currently available state-certified electronic address databases 90 days after the implementation of the new GIS database. Once the GIS database was implemented, DOR was required to immediately notify vendors that it is available for use. The bill then established a hold harmless provision for vendors that use the state's GIS database to determine sales and use tax rates for addresses and taxing jurisdictions. The hold harmless provision also applies to vendors that use third-party databases, which are verified to use the most current information from the state GIS database. The GIS database was declared to be online by DOR on April 1, 2021. DOR is responsible for ensuring that 95 percent of the information provided in the GIS database is accurate and up-to-date.

Other legislation impacting sales and use tax is discussed in the Recent Legislation Implementation Updates section of this report.

Committee Activities

The task force held four meetings during the 2023 interim. Briefings and presentations were made by the Office of Legislative Legal Services (OLLS), the Colorado Department of Revenue (DOR), the Colorado Municipal League (CML), the Associated General Contractors (AGC) of Colorado, representatives from the cities of Lakewood, Denver, and Commerce City, and members of the public on a range of topics, including:

- implementation updates on recent related legislation,
- local government and business user experience with SUTS,
- efforts towards increased utilization of SUTS; and
- sales tax filing audit selection process by state and local authorities.

Recent Legislation Implementation Updates

The task force received implementation updates from the OLLS, DOR, and CML regarding legislation passed during the 2022 and 2023 legislative sessions, as well as other approved bills with impacts to sales and use tax. In addition, the task force discussed the economic nexus in light of the ongoing *Wayfair vs. Lakewood* lawsuit.

Senate Bill 22-032 Simplify Local Sales & Use Tax Administration. Recommended by the task force during the 2021 interim, the bill requires DOR to collect sufficient information from retailers that use SUTS and make the information available to local taxing jurisdictions by July 1, 2023. In addition, beginning July 1, 2022, a local taxing jurisdiction may not charge a fee for a general business license to relevant retailers within the jurisdiction. On or after July 1, 2023, a local taxing jurisdiction may not require a relevant retailer to apply separately for a general business license. Relevant retailers are those that use SUTS, have a standard retail license, and either do not have a physical presence in the jurisdiction or have only an incidental physical presence in the local taxing jurisdiction.

While delivering legislative updates, CML noted the need for compliance help implementing the bill; subsequently, CML posted FAQs on their website to support local taxing jurisdictions. DOR updated the task force on its progress, highlighting the stakeholder process with local governments to determine what information regarding physical presence requirements would be helpful for retailers. DOR reported success in gathering and publishing the required information on physical presence, and held a training session with stakeholders in which the department received positive feedback.

House Bill 22-1039 Sales & Use Tax Exemption Form Simplification. Recommended by the task force during the 2021 interim, the bill requires DOR to examine its sales and use tax exemption forms and requirements, and simplify the forms to the extent feasible. The simplified forms and requirements must be in place beginning July 1, 2023. The bill also clarifies existing statutory form requirements to allow the simplified forms to be used for certain exemptions.

DOR reported that it audited all forms and applications in spring of 2023 and held a stakeholder meeting in June 2023 to get feedback from the people who typically interact with these forms. DOR settled on one form that could be used for all sales and use tax exemptions.

Senate Joint Resolution 23-004 Uniform Sales and Use Tax on Construction Material.

Recommended by the task force during the 2022 interim, the joint resolution requests updates from CML related to a uniform administration of sales and use tax on construction materials, standardized information on building permits, and a quicker issuance of certain documentation. It also urged self-collecting localities to cooperate on those topics.

CML updated the task force on its progress, noting the creation of internal groups to collaborate on the process. CML plans to create a standard model for building permits and will encourage adoption by local taxing jurisdictions. Finally, CML continues to work through definitions across jurisdictions and is having conversations to determine where standardization of language and taxing is possible.

House Bill 23-1017 Electronic Sales and Use Tax Simplification System. Recommended by the task force during the 2022 interim, the bill adds requirements for the implementation of SUTS, designed to facilitate and simplify the collection and remittance of sales and use tax. No later than January 1, 2025, the act requires DOR to modify SUTS in the following ways:

- to populate a local account number on all returns and summary reports if the retailer filing the return has a number and provides the number in SUTS;
- by developing a simplified user interface for filing returns as an alternative to the current spreadsheet method;
- to provide retailers with a bulk testing option for address files; and
- to include additional use taxes, additional information about deductions, filtering options, and certain tabs.

The act additionally requires DOR to create a campaign to advertise the system and encourage participation, and that DOR refrains from imposing a convenience fee or any other type of charge for a payment through SUTS.

Task force members expressed interest in demonstrations on how to enter data into the SUTS system using both spreadsheets and the bulk filing system to monitor the DOR's progress on the development requirements under HB 23-1017. DOR demonstrations on spreadsheet entry and bulk filing are described below in the User Experience and Utilization of SUTS section of this report. DOR reported that progress is ongoing for their required system improvements, and DOR will implement the required marketing process upon completion of system updates. DOR plans to look for new ways to encourage businesses to use SUTS and provide feedback to the system.

Additional legislation. OLLS provided summaries of several other bills that have passed in recent years and impact sales and use taxes. Those bills include:

- [Senate Bill 23-143](#): Retail Delivery Fees;
- [House Bill 23-1240](#): Tax Exemption for Construction and Building Materials After a Wildfire;
- [House Bill 23-1272](#): Tax Policy that Advances Decarbonization;
- [House Bill 23-1101](#): Ozone Season Transit Grant Program Flexibility;
- [House Bill 23-1293](#): Felony Sentencing Commission Recommendations; and
- [House Bill 23-1062](#): Metropolitan District Tax for Parks and Recreation.

Wayfair v. Lakewood. In 2022, Wayfair filed a lawsuit against the City of Lakewood arguing that the taxes Lakewood imposed on Wayfair between 2018 and 2021 were unconstitutional due to the home rule municipality's complex sales tax structure. DOR implemented SUTS, which provides a simplified system for users to file taxes, after the lawsuit was originally filed. Lakewood attorney Alex Dorotik provided background and an update on the status of the case to the task force. The task force and Mr. Dorotik discussed interpretations of economic nexus and the potential limits of impacts from a decision in the case on other municipalities and sellers in the state because the circumstances occurred during a time period preceding the existence of SUTS.

Due to the lawsuit's active status, Mr. Dorotik's comments were limited. A defendant filed to dismiss the case in October 2022; it is unclear when the Jefferson County District Court will rule on a motion to dismiss. If the case moves forward, Mr. Dorotik explained the outcome will be dependent on, amongst other things, whether or not Wayfair had a physical presence through deliveries in Lakewood.

User Experience and Utilization of SUTS

During the 2023 interim, the task force heard presentations from DOR, CML, and representatives of business interests and local governments on improvements to the SUTS system and how user experience may be improved. The task force also discussed utilization trends and identified potential barriers to increased utilization.

Current system usage. As of October 2023:

- of the 68 home rule municipalities that self-collect sales and use taxes, 62 have signed the SUTS system agreement;
- there were 16,631 businesses registered for the SUTS system; and
- more than \$323 million in sales tax revenue has been remitted through SUTS.

More information about the system usage can be found on the SUTS reporting dashboard here: <https://colorado.munirevs.com/show-page/?page=22>

Local government user experience. The task force heard presentations from local government representatives, including members from the cities of Arvada and Commerce City. The task force also heard from DOR about its internal local government team working with local governments to craft SUTS upgrades, including encouraging participation in the design and testing phases being planned as a result of changes made in [House Bill 23-1017](#). DOR also informed the task force of training sessions held by the local government team and discussed providing data to local governments to help them better administer local licensing. Discussion took place regarding improved search options for data required during the licensing process.

Business user experience. The task force heard presentations on and engaged in discussions with DOR about user experience issues and forthcoming upgrades. Task force member Rachel Quintana, representing the Colorado Chamber of Commerce, discussed business community concerns and observations. Ms. Quintana discussed positive developments in user experience, in particular with regard to GIS lookup and progress on local licensing requirements for remote sellers. She also described concerns about the system's general base functionality and problems with slow loading pages, difficult navigation, and errors.

DOR provided a user demonstration at the August 30 meeting, and the task force discussed the user experience of SUTS as compared to similar systems in other states, particularly around the complexities inherent to local control in Colorado and the related challenges this poses for sales and use tax administration and state-to-state comparisons.

SUTS utilization. The task force received updates on the increase in business filers and the status of discussions with local governments that do not use SUTS. The task force heard a presentation from task force member Ken Keeley, representing the city of Commerce City, who indicated that the city had experienced a 40 percent increase in monthly business filers between July 2022 to July 2023. He also stated that revenues have tripled over the same period, although this still only represents 5 percent of the city's total tax revenues.

DOR indicated that utilization has increased in part due to more home rule municipalities opting out of self-collection due to increased filer volume as a result of the *Wayfair v. South Dakota* U.S. Supreme Court decision. The task force also discussed expected increased utilization as a result of future SUTS upgrades and marketing efforts, and the potential for increased exposure to SUTS as part of business registration process with the Colorado Secretary of State.

The task force and DOR discussed potential state cost increases due to increased utilization as a result of system design. Specifically, the task force and DOR discussed the costs associated with the GIS lookup function within SUTS. DOR indicated that the existing contract allows for 75 million lookups per year, and the state is averaging a fraction of that limit, so cost increases are unlikely in the near future.

Other discussions between the task force and DOR centered around technological difficulties related to file integration and data transfer between business tax software and SUTS, and how SUTS can be best utilized by businesses through the existing data entry methods. DOR indicated that future marketing and educational outreach will take place after upgrades are complete. Lastly, in response to feedback from the task force on business challenges in potential return rejection, DOR stressed the importance of accuracy in return amounts due to their role in working with local governments.

Bulk filing. DOR provided a demonstration on bulk filing in an effort to clarify and respond to questions concerning SUTS utilization by entities with highly complicated filing needs. DOR confirmed that the bulk filing option requires familiarity with XML code. DOR indicated that there are very few bulk filers; however, those who do choose bulk filing have the opportunity to contact DOR directly about their experience. DOR also mentioned that there are entities who use XML uploading in their interactions with Revenue Online, and therefore are familiar with the process.

Audit Selection Process

During the 2023 interim, the task force heard from state and local tax administrators in a panel discussion regarding their audit selection processes. The panel included representation from small and medium-sized home rule municipalities (Commerce City and the city of Arvada, respectively), one of the state's two home-rule city and county jurisdictions (Denver), and DOR.

The panelists described the audit processes for their respective jurisdictions. DOR described the purpose of the auditing process as educational, noting that they cannot reasonably audit every taxpayer. Rather, DOR's goal is to inform the auditee throughout the process, communicating findings as they come so that businesses may carry out the correct taxation requirements in the future. The DOR additionally maintains a dispute resolution process to provide businesses with the opportunity to engage with the DOR and understand their tax liabilities. The other panelists noted similarities between their educational approaches to auditing and DOR's auditing processes.

The panelists also discussed the parameters used to choose which businesses to audit. The city and county of Denver and DOR described their procedural and analytical selection processes. The city of Arvada noted that they consider building permit activity or tips from outside sources in their audit selection process. Generally, jurisdictions — including the DOR — follow a three-year statute of limitations, meaning they will only audit businesses for the three most recent tax years.

Finally, the task force and panelists discussed how the DOR's auditing processes might impact utilization of SUTS, noting that DOR's GIS database could lead to a business being audited if the database errs and reports incorrect information regarding tax rates and amounts. Discussion revolved around the potential of both temporary amnesty from audits, as well reduced penalty for businesses who use SUTS and end up being audited. Representatives from the city of Arvada noted that both amnesty and a reduced penalty would require changes to their tax code.

Summary of Public Comment

The task force heard from the following individuals at the task force's 2023 meetings:

- Rebecca Tanner, representing Colorado Structures, Inc.;
- Laura Williams, representing Martin Marietta;
- Kinna McDavid, representing All Win Bookkeeping;
- Rachel Bender, representing the Colorado Municipal League;
- Pam Feely, representing the Coalition to Simplify Colorado Sales Tax;
- Ashley Hodgini, representing Expedia Group;
- Kelly Smith, representing Evolve Vacation Rental network;
- Michael Kibbee, representing the City of Greeley;
- Jeffrey Edwards, representing the City of Aurora; and,
- Jeff Hendrickson, representing Martin Marietta.

The task force also received written testimony from the following individuals and organizations as part of its work:

- Jaclyn Terwey, representing the Expedia Group;
- Matthew Groves, representing Simplify Colorado Sales & Use Tax Coalition; and,
- Kelly Smith, representing Evolve Vacation Rental network.

Summary of Recommendations

As a result of the task force's activities, the task force recommended five bills to the Legislative Council for consideration in the 2024 session. Copies of the bills are available at:

<https://leg.colorado.gov/content/itaxtask2023alegislation>

Bill A — Streamline Filing Certain Tax Returns

Filing thresholds. The bill requires home rule municipalities that do not use the SUTS system to allow taxpayers to file returns and pay taxes as follows:

- taxpayers that annually collect less than \$2,000 in tax must file and pay taxes no more than once every year;
- taxpayers that collect \$2,000 to \$25,000 in tax must file and pay taxes no more than once every three months; and
- taxpayers that collect more than \$25,000 must file and pay taxes monthly.

The bill also allows DOR to permit taxpayers who collect more than \$600 in tax per month to file no more than once every three months, beginning with returns filed January 1, 2025. Currently, that threshold is \$300 in tax per month.

Use of SUTS system. Under current law, home rule taxing jurisdictions are not required to use SUTS. The bill requires that all home rule local taxing jurisdictions use the SUTS system by July 1, 2025. Failure to comply prohibits a taxing jurisdiction from participating in streamlined licensing and tax administration provisions for retailers with limited physical presence in the jurisdiction.

Bill B — Hold Harmless for Error in GIS Database Data

The bill establishes that any vendor relying upon information in DOR's GIS database to determine which local tax jurisdictions are owed and by what amount is held harmless in an audit by the state or local taxing jurisdiction for an underpayment of tax, charge, or fee liability that results solely from an error or omission in the GIS database data. The bill also declares that addressing the complex and cumbersome nature of Colorado's unique state and local sales tax system through SUTS system, which includes this GIS database, is matter of statewide concern.

Bill C — Simplify Processes Regarding Certain Local Government Taxes

The bill modifies the scope of the Sales and Use Tax Simplification Task Force to include simplification of local lodging tax systems. Along with the expanded scope, the bill requires the Sales and Use Tax Simplification Task Force to study the feasibility and implementation of an electronic system for businesses to collect and remit local lodging taxes during the 2024 interim. The task force may propose legislation for the 2025 session for the creation or implementation of this system. Relatedly, DOR is required to issue a request for information for an electronic lodging tax system and present it to the task force by September 1, 2024.

The bill also includes reporting requirements for local governments and the DOR for local lodging tax systems and sales and use taxes on building materials and equipment that are integrated into building permits. The bill requires jurisdictions that impose a local lodging tax to file a copy of the resolution or ordinance with the department and report the rate and calculation of the tax.

The bill requires similar reporting for sales and use taxes that are integrated with building permits, but also requires reporting of the information on the permit, timing of remittance, and whether the tax is imposed on asphalt, equipment, storage of equipment, or services. The DOR is required to publish the information twice each year, beginning with a report to be published by July 1, 2025.

Bill D — Uniform Definition and Report for Local Lodging Tax

The bill requires local taxing jurisdictions—including any home rule locality—to apply the same standards to an accommodation intermediary as to a marketplace facilitator that is obligated to collect and remit a local lodging tax. It also prohibits local taxing jurisdictions from requiring additional reporting information from accommodation intermediaries that are not similarly required from other marketplace facilitators. The bill declares these standardized reporting requirements to be matters of statewide concern.

Bill E — Update Local Government Sales & Use Tax Collection

Under current law, DOR administers local sales or use taxes that are imposed by statutory local governments, and if requested, by home rule jurisdictions. The bill modernizes and revises the state laws that govern state administration of local sales or use taxes, including:

- making DOR administration of local sales and use taxes consistent with the administration of state sales tax;
- specifying procedures for local jurisdictions to notify DOR of any changes to sales or use taxes;

- permitting local jurisdictions to allow retailers to retain a percentage of the amount remitted to cover the retailer's expenses in collecting the fee;
- aligns the dispute resolution process for local sales and use tax administration with state sales tax administration, and establishes procedures for if a local tax collected by the department is erroneously remitted to the wrong taxing entity;
- clarifying that vendors who use the state GIS database to determine the jurisdictions to which taxes are owed is held harmless for any tax or fee liability that would be due as a result of an error in the database; and
- requiring local jurisdictions to identify liaisons to coordinate with DOR related to the collection of its sales and use tax; and clarifying which sales and use taxes can be administered by DOR.

Resource Materials

Meeting summaries are prepared for each meeting of the task force and contain all handouts provided to the task force. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of task force meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2023-regular-session>

Meetings and Topics Discussed

July 25, 2023

- Election of task force Chair and Vice-Chair
- Overview of the task force and 2023 sales and use tax legislation
- Task force member introductions
- Updates from the Colorado Department of Revenue, including on the SUTS system
- Updates from the Colorado Municipal League
- Public comment

August 30, 2023

- SUTS utilization and marketing
- Sales tax audit process
- SJR23-004 update and discussion
- Update of the *Wayfair v. Lakewood* lawsuit
- Municipal and business feedback on the SUTS system
- Public comment

September 13, 2023

- Demonstration from the Colorado Department of Revenue on bulk filing in the SUTS system
- Public comment
- Requests for draft legislation

October 27, 2023

- Public comment
- Voting on final bill draft recommendations